

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

SCOTT MICHAEL SIEBER,

Defendant.

Case No. 2:07-CR-145-KJD-PAL

**ORDER**

Before the Court is Defendant Scott Michael Sieber's Motion for Nunc Pro Tunc Order to Correct Judgment (#1241). The United States responded (#1267) and Defendant replied (#1291).

**I. Background**

Defendant petitions this Court regarding three issues. First, Defendant petitions this Court to transfer Defendant from State custody into the custody of the Federal Bureau of Prisons ("FBOP"). Second, Defendant petitions this Court to revise his sentence to run from the date of his guilty plea rather than from the date of sentencing. Third, it appears that Defendant also petitions this Court to Order that his Federal sentence run concurrently with his State sentence.

1 II. Discussion

2 A. Transferring Defendant from State custody to Federal custody

3 It is well established in this Circuit that an attempt to transfer a prisoner from the custody of  
4 the state into federal custody violates “fundamental principles of comity and separation of powers.”  
5 United States v. Warren, 610 F.2d 680, 684 (9th Cir. 1980). Such transfer decisions are “to be  
6 resolved by the executive branches of the two sovereigns.” Id. Accordingly, this Court lacks  
7 authority to effect Defendant’s transfer.

8 B. Power to Modify a Term of Imprisonment After Imposition

9 While the courts have some power to modify a term of imprisonment once it has been  
10 imposed, that power is strictly limited by 18 U.S.C. § 3582(c). Defendant does not appear to qualify  
11 for sentence modification under any provision of § 3582(c), nor does Defendant allege any such  
12 qualification. Accordingly this Court lacks authority to modify Defendant’s term of imprisonment.

13 i. Running the Sentence from Date of Guilty Plea Rather than Sentencing Date

14 This Circuit held in 2011 that a prisoner’s sentence cannot “commence before the district  
15 court imposed the federal sentence.” Schleining v. Thomas, 642 F.3d 1242, 1247, 1249 (9th Cir.  
16 2011) cert. denied, 132 S. Ct. 2415 (U.S. 2012). Accordingly, this Court lacks authority to  
17 commence Defendant’s sentence on any date prior to sentencing, even during the sentencing period.

18 ii. Running Defendant’s Federal Sentence Concurrently with his State Sentence

19 The courts are generally able to specify whether a sentence will be served concurrently or  
20 consecutively during sentencing. 18 U.S.C. § 3584(a). However, both the Bureau of Prisons and the  
21 United States have acknowledged that Defendant’s sentence began to run on the date his federal  
22 sentence was imposed, making it concurrent with the State sentence (#1267, Response to Motion for  
23 Nunc Pro Tunc Order to Correct Judgment, Exhibit 1, p. 2). Accordingly, Defendant’s petition for  
24 concurrent running of his sentences is moot.

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1 III. Conclusion

2 **IT IS HEREBY ORDERED THAT** Defendant's Motion for Nunc Pro Tunc Order to  
3 Correct Judgment (#1241) is **DENIED**;

4 **IT IS FURTHER ORDERED THAT** Defendant's Motion for Nunc ProTunc Order to  
5 Correct Judgment (#1411) is **DENIED** as duplicative and moot.

6 DATED this 28<sup>th</sup> day of May 2013.

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Kent J. Dawson  
United States District Judge  
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